S.B. CIVIL WRIT PETITION NO.4990/2006

Radhey Shyam Sharma
Vs.
State of Raj. & Ors.

DATE OF ORDER : 25.5.2007

HON'BLE SHRI JUSTICE MOHAMMAD RAFIQ

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Shri Sanjeev Prakash Sharma for the petitioners.
Shri B.S. Chaba Dy.Govt. Advocate for the State.

REPORTABLE

Heard learned counsel for the parties.

The petitioner has challenged the order dated 15.6.2006 whereby the Authorized Officer (Additional District Collector, Kota) while drawing the proceedings for the election to the office of Vice Chairman, Krishi Upaj Mandi Samiti, Kota rejected the nomination of the petitioner for election to the aforesaid office.

Factual matrix of the case is

that the respondents by notification dated 29.5.2006 notified the list of the elected candidates from the electoral college of farmers and also the electoral college of traders/brokers. Name of the petitioner appeared in the electoral college of traders and brokers in that notification. Being the member of that college, the name of the petitioner was included in the list of elected members as is evident from Annexure-3 placed on record. Programme for conducting the election to the office of Chairperson and Vice Chairman of Krishi Upaj Mandi Samiti, Kota was declared on 6.6.2006 by the Authorized Officer, namely, Additional District Collector as per Rule 32(1) of the Rajasthan Agricultural Produce Market Rules, 1963. While he received the nominations from the aforesaid members, name of the petitioner was proposed by Smt. Chandra Kanta

Meghwal. Election was scheduled to take place on 14.6.2006.

It is contended that while Smt. Santosh Kumari was declared elected as Chairperson in spite of the fact that only nomination received for the post of Vice Chairman was that of the petitioner, there being no other nomination filed, the Authorized officer by the aforesaid impugned order dated 15.6.2006, rejected the nomination of the petitioner on the ground that the name of the aforesaid Smt. Ram Naraini Bai who had seconded nomination of the petitioner, had also seconded candidature of Smt. Chandra Kanta Meghwal for election to the post of Chairperson. In doing so, the Authorized Officer relied on the Circular dated 7.6.2006 issued by the Director -cum- Ex-officio Deputy Secretary, Agriculture Marketing Directorate, Jaipur. The petitioner has, therefore, challenged the

relevant clause 7 of the aforesaid circular as ultra vires of the Rules of 1963.

Learned counsel for the petitioner argued the nomination of the petitioner could not be rejected only because Smt. Ram Naraini Bai who had seconded her nomination, had also seconded nomination of Smt. Chandra Kanta Meghwal for election to the office of Chairperson. It was argued that the process of election had been initiated on 6.6.2006 by issuance of notification dated 6.6.2006, and therefore, circular dated 7.6.2006 which was issued later in point of time could not be retrospectively applied to an on-going election process. Learned counsel also argued that clause 7 of the aforesaid circular so far as it provides, that a person cannot propose or second both Chairperson or Vice Chairman is ultra vires of sub-rule (2) of Rule 32 of

the Rules of 1963. Learned counsel further submits that the petitioner's being the only nomination, he was entitled to be declared elected and the impugned order rejecting his nomination is liable to be quashed and set aside.

Learned Deputy Government Advocate opposed the petition and argued that rule 32(2) of the Rules of 1963 provides that candidates for the office of Chairman and Vice Chairman shall be separately proposed and seconded. Proposer and seconder shall not be the same person. It appears that the circular dated 7.6.2006 directed for separate proposer and seconder could be for the office of Chairperson and Vice Chairman, and there was no obnoxiousity in that provision of the circular. Learned counsel also relied on Rule 32(11) of the Rules of 1963 which provides that if during the course of election of a

Chairman or Vice Chairman any dispute arises as to the correctness or otherwise of the decision given or procedure followed by the Collector or the person authorized by him it shall be referred to the Secretary of the Board and the decision of the Secretary of the Board in respect of such dispute shall be final.

Shri Sanjeev Prakash Sharma, learned counsel for the petitioner submits that he could not have gone to the Secretary of the Board as the circular dated 7.6.2006 has been issued by a superior officer to the Secretary i.e. Director -cum- Ex-Officio Deputy Secretary of the Government and he could not challenge validity of circular before him, and therefore the writ petition was the only efficacious remedy.

Having heard learned counsel for

the parties and perused the material on record, I find that the determination of dispute hinges upon the correct interpretation of sub-rules (1), (2) and (3) of rule 32 which for the facility of reference are reproduced hereunder :-

> “(1) The Collector or any person authorised by him in this behalf shall call the first meeting of a newly constituted market committee to elect its Chairman and Vice chairman from amongst its members. For the purpose of this election, the Collector or the person authorised by him in this behalf shall preside over the meeting but shall not vote.
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> (2) At such meeting, candidates for the office of Chairman and Vice-Chairman shall be separately proposed and seconded. The proposer and seconder shall not be the same

person. The names of all the candidates proposed and seconded shall be read out by the President of the meeting.

(3) If there is only one candidate for each of the offices of Chairman and Vice-Chairman he shall be declared to have been elected."

The Director -cum- Ex-Officio Deputy Secretary to the Government while issuing the Circular dated 7.6.2006, in clause 7 of the circular had incorporated following provisions :-

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The point for consideration is whether the proviso to clause 7, as stated above, is based on the correct interpretation of rule 32(2) of the Rules which inter alia provides that candidates for the office of Chairman and Vice-Chairman shall be separately proposed and seconded. The proposer and seconder shall not be the same person. The names of all the candidates proposed and seconded shall be read out by the President of the meeting.

On correct reading of that sub-rule, it appears that the rule making authority indicated separate proposers and seconders for the post of Chairperson and Vice Chairman. When it was mentioned that there should be separate proposers and seconders, and therefore, separate list has to be

made both for the Chairperson and Vice Chairman in the sense that while separate proposers and seconders would be required for Chairperson and Vice Chairman. This is however not to say that a person who is a proposer for the post of Chairperson cannot be proposer for the post of Vice Chairman and vice versa and also, that a person who is seconder for the post of Chairperson cannot be the seconder for the post of Vice Chairman and vice versa. Later part of the circular which directs that the list of the members who proposed the nomination of Chairperson, proposer and seconder for the nomination of Chairperson would not propose nomination of Vice Chairman is therefore ultra vires of the provisions of rule 32(2) of the Rules and declared as such. In fact the aforesaid provisions ought not to have been applied uniformly by the Authorized Officer while scrutinizing

the nomination of the defeated candidates for the office of Chairperson. It appears from the impugned order that Smt. Chandra Kanta Meghwal who was seconder of the petitioner for the post of Vice Chairman was herself a candidate for election to the office of Chairperson and her nomination had been seconded by none other than Smt. Ram Naraini Bai, who seconded nomination of the petitioner for the post of Vice Chairman. It does not appeal to logic why when the nomination of Smt. Chandra Kanta Meghwal was not rejected on that ground; in spite of the fact that her proposer Smt. Ram Naraini Bai, had seconded the name of the petitioner for nomination for election to the office of Vice Chairman, the nomination of the petitioner was rejected.

It appears to me that clause 7 of the aforesaid circular was

interpreted by the Authorized Officer in the sense that a person who is proposer for one post can be seconder for the other and to that extent, he could have been incorrect. But so far as the rejection of the nomination of the petitioner is concerned, the same cannot be held to be in conformity with rule 32(2).

Adverting now to the objection of learned Deputy Government Advocate that the petitioner ought to have approached the Secretary of the Board for adjudication of the dispute, I am not inclined to accept the same, and purportedly therefore, I have proceeded to examine the matter on merits because as rightly pointed out by the learned counsel for the petitioner, the aforesaid circular was issued by the Director -cum- Ex-Officio Deputy Secretary to the Government who is superior to the Secretary of the Board in hierarchy,

and therefore, obviously the Secretary was bound by the aforesaid circular and could not examine its validity. Even if it is accepted that the circular issued later than the notification of election, could be used as guideline for the Returning Officer/Prescribed Authority, on interpretation of the aforesaid clause, and rule 32(2), it is evident that nomination of the petitioner was illegally rejected.

As a result of the aforesaid discussion, the writ petition is allowed. Impugned order dated 15.6.2006 rejecting nomination of the petitioner is quashed and set aside and clause 7 of the circular dated 7.6.2006, to the extent indicated above, is held to be ultra vires of rule 32(2) of the Rules of 1963. Consequence of such a situation as envisaged in sub-rule (3) of Rule 32 that “if there is only one candidate

for each of the offices of Chairman and Vice chairman he shall be declared to have been elected” would therefore follow, and accordingly, the petitioner is declared to be elected to the office of Vice Chairman of the Krishi Upaj Mandi Samiti, Kota.

There shall be, however, no order as to costs.

(MOHAMMAD RAFIQ),J.

Skant/-